

UNITED STATES DISTRICT COURT

for the
District of

Division

FILED
U.S. DISTRICT COURT

2020 MAR 11 P 2:58

DISTRICT OF UTAH

DEPUTY CLERK

2:19 CV 821 CW

(to be filled in by the Clerk's Office)

Steven G Pegler
 2099 W 4700 S C-114
 TAYLORSVILLE UT 84129
 801-205-1303

Case No.

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint.
 If the names of all the plaintiffs cannot fit in the space above,
 please write "see attached" in the space and attach an additional
 page with the full list of names.)

-v-
 DOUG SMITH AUTOPLEX, INC. d/b/a
 DOUG SMITH

Jury Trial: (check one) Yes No

Defendant(s)

(Write the full name of each defendant who is being sued. If the
 names of all the defendants cannot fit in the space above, please
 write "see attached" in the space and attach an additional page
 with the full list of names.)

Second Amended

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<i>Steven G Pegler</i>
Street Address	<i>2099 W 4700 S C-114</i>
City and County	<i>TAYLORSVILLE</i>
State and Zip Code	<i>Utah 84129</i>
Telephone Number	<i>801-205-1303</i>
E-mail Address	<i>steve562000@gmail.com</i>

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

4. I filed charges with the Equal Employment Opportunity Commission regarding the defendant's discriminatory conduct on or about:

June 12 2019

(Month, Day, Year)

5. The Equal Employment Opportunity Commission sent the attached "Notice of Right to Sue" which I received on:

August 2 2019

(Month, Day, Year)

(Please attach the "Notice of Right to Sue" to this complaint.)

6. The discriminatory acts that are the basis of this suit are:

- a.
b.
c.
d.
e.
f.
g.

Failure to employ me
Failure to promote me
Termination of my employment
Demotion
Denied equal pay/work
Sexual harassment
General harassment
Other acts (Be specific: Attach an additional sheet if necessary)
Retaliation

7. Defendant's conduct is discriminatory with respect to:

- a.
b.
c.

my race
my color
my sex

- d.
e.
f.

my religion
my national origin
my age

8. I believe that the defendant is still committing these acts against me.

yes no *Not longer there*

D. CAUSE OF ACTION

1. I allege that the defendant has discriminated against me and that the following facts form the

Attached

2. Name of first defendant:
Present mailing address or
business location:
Doug Smith Autoplex dba
Doug Smith Subaru
501 W Main St
American Fork, UT 84003
3. Name of second defendant:
Present mailing address or
business location:
4. Name of third defendant:
Present mailing address or
business location:

(Use additional sheets if necessary.)

C. NATURE OF CASE

1. The address at which I sought employment or was employed by the defendant(s) is:

501 W Main St
American Fork, UT 84003

2. The discriminatory acts occurred on or about:

September 12 2018 and September 2017 through September 12, 2018
(Month, Day, Year)

3. I filed charges with the Anti Discrimination Division of the Utah State Industrial
Commission regarding the defendant's discriminatory conduct on or about:

Only Filed with EEOC June 12 2019
June 12 2019
(Month, Day, Year)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Steven Pegler
2099 W. 4700 S.
Taylorsville, UT 84129

From: Phoenix District Office
3300 North Central Ave
Suite 690
Phoenix, AZ 85012



*On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(b))*

EEOC Charge No.

EEOC Representative

Telephone No.

540-2019-02336

Jeremy A. Yubeta,
Enforcement Supervisor

(602) 640-5028

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; In other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

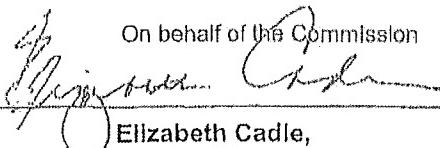
Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

JUL 31 2019

(Date Mailed)

Enclosures(s)


 Elizabeth Cadle,
District Director

cc:

Tiffany Velez
Human Resources
Doug Smith Autoplex
501 West Main
American Fork, UT 84003

1973-14:19

EEOC Form 5 (1109)

CHARGE OF DISCRIMINATION		Charge Presented To:	Agency(ies) Charge No(s):
<small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		<input type="checkbox"/> FEPA	
		<input checked="" type="checkbox"/> EEOC	540-2019-02336
Utah Anti-Discrimination & Labor Division		and EEOC	
<small>State or local Agency, if any</small>			

I was discharged on or about September 12, 2018 using an inaccurate Google review as an excuse by a customer I had 10 months prior to the review. It was fictitious and I had told Rich Green about this customer at the time. He referred to me as a fat Jewish bald liberal guy and because I still saw reviews he complained about the whole dealership and management 6 months after I was fired.

I believe I have been retaliated against for complaining about Brady and discriminated against due to my religion, Jewish and my national origin, in violation of Title VII of the Civil Rights Act of 1964, as amended, I believe I have been discriminated against due to my age in violation of the Age Discrimination in Employment Act of 1967, as amended. I believe I have been discriminated against in violation of the Americans with Disabilities Act of 1990, as amended.

<small>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</small>		NOTARY – When necessary for State and Local Agency Requirements
<small>I declare under penalty of perjury that the above is true and correct.</small>		<small>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</small> <small>SIGNATURE OF COMPLAINANT</small>
<small>JULY 29 2019</small> <small>Date</small>	 <small>Charging Party Signature</small>	<small>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE</small> <small>(month, day, year)</small>

Cause of Action -- Harassment

Violation of Title VII of the Civil Rights Act of 1964

I had to work in a hostile environment with great trepidation.

1) Approximately October 2017

I told sales manager Rich Green how co-worker Blaine Brady screamed threateningly, inches from my face, for several minutes. He had charged out of the showroom (with customers at his desk watching) because I accidentally set off a car alarm by the showroom. I thought he was going to hit me. Rich Green made Blaine Brady apologize to me the next day. He did not report the incident to Human Resources as Doug Smith Subaru policy requires. No disciplinary action was taken and no professional counseling was given.

2) Approximately Two months later

I told Blaine Brady and his customers I had just sold a car he was about to show them on a very busy Saturday. He started screaming at me in front of his customers and alarming several others nearby. He was upset because there was not a sold sign on the car. Sold signs are only put on cars pre-sold off the truck that brings them to the dealership. I bypassed Rich Green and asked General Manager Frank Smith where the Human Resources lady's office was located. I explained both incidents. He said he would handle it. Blaine Brady apologized the next day. No actions were taken.

Reporting the incidents drove senior sales manager Rich Green to retaliate. Increased anxiety had me seeing my doctor several times. After several visits my doctor suggested I might be better off quitting. I believe at times it affected my performance. The retaliation eventually led to my firing. I feared a more serious result next time it happened.

Cause of Action – Retaliation

Violation of Title VII of the Civil Rights Act of 1964

Managers Rich Green, Derrick Schwendiman, and John Cassel retaliated against me for taking harassment complaints to Frank Smith.

- 1) Approximately March 1st or 2nd 2018

Instead of working a double shift once a week and having a day off it was agreed by Derrick Schwendiman I would have no days off and no double shift because of my disability – sleep apnea. This was agreed when I was hired in September 2017. I came in second in sales in February 2018 and had my best month. Rich Green and John Cassel told me I could work only 4 days starting this month, March 2018. The reason was “it wasn’t right.”

- 2) Rich Green made my sales deals harder to close when he could. I told many customers to come back when he was not there. Some did. I learned to go to Derrick Schwendiman when I thought the circumstances might turn out better. All worked deals are saved in the computer. It can be looked up where a deal was left off and how it was worked if the customer comes in to buy again.

Doug Smith Subaru’s policy states if a salesman does not sell at least 7 cars a month in consecutive months they would be terminated. Less hours made this more difficult. My financial opportunities were reduced.

Cause of Action - Religion

Violation of Title VII of the Civil Rights Act of 1964

1) Approximately Sept 2017

All 10 employees and all 4 managers at Doug Smith Subaru were LDS when I started working there. When I was fired approximately September 12 2018; 13 of the 14 salesmen and the 4 managers were LDS.

2) Approximately Sept 12 2018

An Anti-Semitic google review criticizing me was the reason sales managers Rich Green, Derrick Schwendiman, and John Cassel gave for firing me. Derrick Schwendiman said Subaru of America would be told about this review. The review was about Johnathan Coyne's experience approximately 10 months prior that Rich Green handled and to paraphrase said the customer was "looking to get something." Rich Green took no action against me when it happened. Upon firing me he said he vaguely remembered it.

Doug Smith Subaru's sales managers did not investigate the review. They received another google review that was blistering and nasty review 6 months later about the management; it did not mention me at all. I saw the review as I was still getting the notifications on my email. They used religion to fire me and damage my career and income. Doug Smith Subaru's top salesman for 12 years told me there is a learning curve of 1 year. I was about to take off – he's been making over 6 figures for several years.

Request for Relief

Referring to my injury – I ask for \$132,000 plus damages.

I earned approximately \$38,000 from Doug Smith Subaru in 2018. Prorated to the end of the year I would have earned about \$50,000. I believe my experience would have translated to a 20% increase the following 2 years. \$60,000 the first year, \$72,000 the second year.

Steven Pegler
X *Stev Pegler*

March 11, 2020
2020

*I mailed with Federal Express on
copy. Enclosed receipt*

At B

JS 44 (Rev. 08/18)

Amended

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Steven G. Pester

SAH 44KE

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Doug Smith Subaru

Utah County

(c) Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" In One Box Only)

 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversify
(Indicate Citizenship of Parties In Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" In One Box for Plaintiff and One Box for Defendant)

Citizen of This State

 1 Incorporated or Principal Place of Business In This State 4 DEP 2 Incorporated and Principal Place of Business In Another State 5 S

Citizen or Subject of a Foreign Country

 3 Foreign Nation 6 S

IV. NATURE OF SUIT (Place an "X" In One Box Only)

CONTRACT

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability
- 196 Franchise

- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury
- 362 Personal Injury - Medical Malpractice

- PERSONAL INJURY
- 365 Personal Injury - Product Liability
- 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- 368 Asbestos Personal Injury Product Liability
- PERSONAL PROPERTY
- 370 Other Fraud
- 371 Truth in Lending Act
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

PERSONAL INJURY

 625 Drug Related Seizure of Property 21 USC 881 690 Other

- 422 Appellate 28 USC 158
- 423 Withdrawal 28 USC 157

- 375 False Claims Act
- 376 Qui Tam (31 USC 3729(e))
- 400 State Reapportionment

- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce
- 460 Deportation

- 470 Racketeer Influenced and Corrupt Organizations
- 480 Consumer Credit
- 485 Telephone Consumer Protection Act

- 490 Cable/Sat TV

- 850 Securities/Commodities/ Exchange
- 890 Other Statutory Actions

- 891 Agricultural Acts
- 893 Environmental Matters

- 895 Freedom of Information Act

- 896 Arbitration
- 899 Administrative Procedure Act/Review or Appeal of Agency Decision

- 950 Constitutionality of State Statutes

REAL PROPERTY

- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

- 440 Other Civil Rights
- 441 Voting
- 442 Employment
- 443 Housing/ Accommodations
- 445 Amer. w/Disabilities - Employment
- 446 Amer. w/Disabilities - Other
- 448 Education

- HABENS CORPUS
- 463 Alien Detainee
- 510 Motions to Vacate Sentence
- 530 General
- 535 Death Penalty
- Other:
- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition
- 560 Civil Detainee - Conditions of Confinement

PRISONER PETITIONS

 790 Other Labor Litigation 791 Employee Retirement Income Security Act

LABOR

- 710 Fair Labor Standards Act
- 720 Labor/Management Relations
- 740 Railway Labor Act
- 751 Family and Medical Leave Act

- 361 HIA (1395f)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(b))

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" In One Box Only)

- Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (Specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

Title VII of the CIVIL RIGHTS ACT of 1964

Brief description of cause:

DISCRIMINATION

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.C.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

Case: 2:19-cv-00821

Assigned To : Jenkins, Bruce S.

Assign. Date : 10/25/2019

Description: Pegler v. Doug Smith Subaru